

November 10, 2005

BY ELECTRONIC FILING

Catherine Seidel, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: WT Docket No. 02-55
Ex Parte Presentation and Petition for Waiver

Dear Ms. Seidel:

The Commission's Orders in the above-captioned proceeding¹ required Sprint Nextel Corporation ("Sprint Nextel")² to obtain from any entity meeting certain criteria a "Letter of Cooperation" demonstrating its commitment to cooperate with Sprint Nextel and the Commission in the 800 MHz band reconfiguration process.³ On March 7, 2005, Sprint Nextel submitted an *ex parte* presentation and the required "Letter of Cooperation" from Nextel Partners.⁴

¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶¶ 325, 344 (2004) ("*Report and Order*"); Erratum (rel. Sep. 10 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Public Notice, "Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd 21492 (2004); Third Erratum, 19 FCC Rcd 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 27 (2004) ("*Supplemental Order*"); Erratum (rel. Jan. 19, 2005); Memorandum Opinion and Order (rel. Oct. 5, 2005).

² Sprint Nextel Corporation is the result of a merger between Sprint Corporation and Nextel Communications, Inc., which closed on August 12, 2005.

³ In the *Report and Order* in this proceeding, the Commission stated that "Nextel shall provide a letter or letters, in content satisfactory to the Commission, from any and all parties having a financial or equitable interest in any existing or proposed 800 MHz system, whether in the United States, Mexico or Canada, and connected in any way to Nextel by way of being a subsidiary, partner, or otherwise; to the effect that such parties are bound to perform the obligations imposed on Nextel herein to the extent such obligations are necessary or desirable in the completion of reconfiguration of the 800 MHz band." *Report and Order*, ¶ 344. Upon reconsideration, the Commission narrowed the group of entities from which Nextel must obtain such letters of commitment: "We now clarify that we did not intend such an expansive definition but rather desired Nextel or its successors or assigns to provide the Commission with letters demonstrating commitments from their corporate partners, subsidiaries, or affiliates (including any 800 MHz system operations in which Nextel has an ownership interest)." In a footnote appended to the end of the parenthetical in this statement, the Commission wrote, "*E.g.*, Nextel Partners and Nextel International." *Supplemental Order*, ¶ 27 n. 61.

⁴ For convenience, attached hereto are the March 7 *ex parte* presentation and Letter of Cooperation.

In the March 7 *ex parte* presentation, Sprint Nextel explained the basis for its conclusion that it is not required by the Commission's Orders to obtain a Letter of Cooperation from Nextel International (which is now known as NII Holdings, Inc. (NII)).⁵ Specifically, Sprint Nextel explained that it owned only a small (20%) interest in NII and, consequently, lacked the financial or other control over NII that would be necessary to direct NII to cooperate in the reconfiguration of the 800 MHz band. Sprint Nextel continues to believe that neither the text nor the intent of the Commission's Orders required Sprint Nextel to obtain a Letter of Cooperation from NII. Indeed, since the March 7 *ex parte* presentation, the ownership interest of Sprint Nextel in NII has in fact declined to 9.8 percent. Nonetheless, to eliminate any possible uncertainty and to avoid any potential effect on the implementation of the Commission's 800 MHz band reconfiguration and licensing plan, Sprint Nextel respectfully requests a waiver of the requirements of paragraph 27 of the *Supplemental Order* to the extent it may be necessary to relieve it of the obligation to obtain a Letter of Cooperation from NII.⁶

Under the Commission's rules, a request for waiver in a wireless proceeding must show that application of the rule in question either would not serve "[t]he underlying purpose of the rule(s)" or "would be inequitable, unduly burdensome or contrary to the public interest or the applicant has no alternative."⁷ The circumstances of this request plainly meet these criteria.

The stated intent of the obligation set forth in paragraph 27 "was to foreclose the possibility that entities such as Nextel Partners, Inc., a subsidiary of Nextel could disclaim responsibility for retuning its systems to implement band reconfiguration."⁸ As explained above, NII is neither a "subsidiary" nor "affiliate" of Sprint Nextel; it is a licensee of the Mexican government providing wireless communications services in Mexico. Further, in view of its modest (and declining) ownership interest in NII, Sprint Nextel has no ability to require NII to execute a Letter of Cooperation or otherwise control its actions with respect to the implementation of the Commission's reconfiguring and licensing plan in this proceeding. Hence, enforcement of the paragraph 27 obligation on Sprint Nextel in these circumstances clearly would not further the Commission's underlying purpose in requiring such Letters of Cooperation from Sprint Nextel subsidiaries.⁹

The same considerations, moreover, demonstrate that extending the Letter of Cooperation requirement to include NII would be inequitable, unduly burdensome, and contrary to the public interest. Indeed, the Commission noted that it did not intend to include "independent companies" within the scope of the requirement. NII is a publicly traded company over which Sprint Nextel exercises neither control nor any special governing influence. For example, it has no representatives on the board of directors of NII. Thus, it would be demonstrably inequitable and contrary to the public interest to enforce an obligation on Sprint Nextel to obtain a Letter of Cooperation from NII. Similarly, it would be unduly burdensome for the Commission to insist that Sprint Nextel must somehow acquire the ability to direct NII to execute a Letter of Cooperation.

⁵ NII is not an abbreviation of "Nextel International Inc." or any other corporate name including the name "Nextel." NII's corporate name has lacked any reference to "Nextel" since November 2002.

⁶ *Supplemental Order*, ¶ 27.

⁷ See 47 C.F.R. § 1.925(b)(3)(i), (ii).

⁸ See *Supplemental Order*, ¶ 27.

⁹ Nor does the FCC have jurisdiction over NII as to its wholly Mexican wireless operations.

In sum, Sprint Nextel continues to believe that paragraph 27 of the *Supplemental Order* does not require it to obtain a Letter of Cooperation from NII. Nonetheless, to the extent the Commission concludes that a waiver of that paragraph is required, Sprint Nextel has demonstrated above that good cause exists for explicitly granting that waiver.

Sincerely,

/s/ James B. Goldstein
James B. Goldstein
Director – Spectrum Reconfiguration Projects
Sprint Nextel Corporation

cc: David Furth
Michael Wilhelm

ATTACHMENT

March 7, 2005

BY ELECTRONIC FILING

John Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55
Ex Parte Presentation

Dear Mr. Muleta:

Nextel Communications ("Nextel") respectfully submits the "Letters of Cooperation" required by paragraph 344 of the Report and Order ("R&O") in the above-captioned proceeding,¹ as modified by subsequent errata and orders that have been issued by the Commission.²

Paragraph 27 of the *Supplemental Order* clarified that Nextel must provide to the Commission letters demonstrating commitments from its corporate partners, subsidiaries, or affiliates that those entities would cooperate with Nextel and the Commission in the 800 MHz band reconfiguration process. The Commission referenced two parties that it believed met this standard: Nextel Partners, Inc. ("Nextel Partners") and Nextel International, Inc. ("NII"). Nextel hereby provides a letter from Nextel Partners and an explanation for why it does not believe that NII meets the Commission's criteria for submission of a letter of cooperation.

I. Nextel Partners

During the course of this proceeding, Nextel Partners committed itself to participate in the system relocations, license swaps, and associated actions and procedures involving its 800 MHz licenses necessary to effectuate the Consensus Plan for 800 MHz realignment. See Comments of Nextel Communications, Inc. and Nextel Partners Inc., WT Docket 02-55, at 3 (Feb. 10, 2003). Nextel currently owns a 32%

¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶¶ 325, 344 (2004) ("R&O").

² See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Erratum (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd 19651 (2004); Public Notice, "Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd 21492 (2004); Third Erratum, 19 FCC Rcd 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd 24708, ¶ 27 (2004) ("Supplemental Order"); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005).

interest in Nextel Partners and both Nextel and Nextel Partners consider Nextel Partners an affiliate of Nextel. Accordingly, attached is a letter from Nextel Partners reconfirming its commitment to retuning its systems and cooperating in the license swaps and associated actions and procedures necessary to complete reconfiguration of the 800 MHz band as set forth in the *R&O*.

II. Nextel International, Inc.

The *Supplemental Order* (§ 27, footnote 61) suggests that NII may possibly be an "affiliate" of Nextel and Nextel should therefore obtain a letter of cooperation from NII. Nextel owns a small (20%) ownership interest in NII, a U.S. company which through its subsidiaries owns and operates 800 MHz iDEN networks outside of the U.S. and is a roaming partner with Nextel. As described further below, however, Nextel's relationship with NII is such that Nextel cannot be deemed to have financial or other control or significant influence over NII. Without such control or influence or the ability to order NII to perform, Nextel cannot require that NII provide Nextel (or the Commission) a letter of cooperation, and consequently believes that NII should not be deemed an affiliate of Nextel for purposes of complying with the requirements set forth in paragraph 344 of the *R&O* and paragraph 27 of the *Supplemental Order*.

Nextel hereby provides an explanation regarding Nextel's ownership interest in NII and how under the Financial Accounting Standards Board ("FASB") rules, Nextel would not be deemed in control of NII.

In accordance with paragraph 2 of Accounting Research Bulletin No. 51, "*Consolidated Financial Statements*", "[t]he usual condition for a controlling financial interest is ownership of a majority voting interest...". Nextel owns less than a 20% stock ownership interest in NII; therefore, we conclude that Nextel does not have a controlling financial interest in NII.

Additionally, Accounting Principles Board No. 18, "The Equity Method of Accounting for Investments in Common Stock," paragraph 17, provides guidance regarding an entity's ability to exercise significant influence over operating and financial policies of an investee (NII in this case) even though the investor (Nextel in this case) holds 50% or less of the voting stock. In applying the guidelines outlined in that paragraph, we also conclude that Nextel does not exercise significant influence over NII.

Our analysis includes consideration of the following:

Lack of protective/participating rights - Nextel does not have any minority shareholder protective or participating rights.

Liquidation rights - Nextel has no preference in liquidation above other NII shareholders.

Continued Investment - Nextel is not required to provide any continuing investment in NII.

Ability to exert significant influence - Factors that were considered included:

- **Board representation:** Since March 2004, Nextel has not had any representation on the NII Board of Directors.
- **Technology:** NII has its own independent relationships with Motorola and negotiates its own contracts for infrastructure and handsets with Motorola.
- **Intercompany Transactions/Participation in Policy Making Process and Interchange of Managerial Personnel:** Nextel does not have any involvement in the policy making process of NII, nor is there an interchange of managerial personnel.

Nextel and NII are and have been parties to roaming agreements whereby customers of each company can roam onto the other's networks. These agreements are typical of roaming agreements that are common in the wireless industry and are priced at market rates.

As described above, Nextel's limited stockholder ownership interest carries with it no special rights or powers of control over NII. Because Nextel exerts no "control" or special influence over NII, Nextel believes it is inappropriate for the Commission to require Nextel to obtain a letter of cooperation from NII regarding 800 MHz band reconfiguration. While Nextel is confident that NII will work with Nextel to accomplish 800 MHz band reconfiguration in the U.S./Mexico border area due to the need to maintain our mutually beneficial roaming arrangements, Nextel could not obtain a letter from NII committing them to formerly undertake any particular technical or financial obligation.

Sincerely,

/s/ James G. Goldstein

James B. Goldstein

Senior Attorney – Government Affairs

Nextel Communications

cc: Catherine Seidel
Michael Wilhelm
Jeffrey Dygert
Elizabeth Lyle

March 7, 2005

BY ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: **Letter of Cooperation of Nextel Partners, Inc.;**
WT Docket No. 02-55

Dear Ms. Dortch:

Nextel Partners, Inc. ("Nextel Partners") respectfully submits this "Letter of Cooperation," as required by paragraph 344 of the Report and Order ("R&O") in the above-captioned proceeding,¹ as modified by subsequent errata and orders that have been issued by the Commission.²

We are pleased to inform you that Nextel Partners and Nextel Communications, Inc. have reached an agreement regarding their mutual rights and responsibilities with respect to the R&O. With that agreement in place, Nextel Partners hereby confirms its commitment to retune its systems and cooperate in the license swaps and associated actions and procedures necessary to complete reconfiguration of the 800 MHz band as set forth in the R&O.

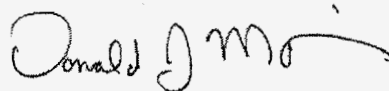
¹ See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd. 14969, ¶¶ 325, 344 (2004) ("R&O").

² See *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Erratum (rel. Sep. 10, 2004); Second Erratum, 19 FCC Rcd. 19651 (2004); Public Notice, "Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," 19 FCC Rcd. 21492 (2004); Third Erratum, 19 FCC Rcd. 21818 (2004); Supplemental Order and Order on Reconsideration, 19 FCC Rcd. 24708, ¶ 27 (2004) ("Supplemental Order"); Erratum, WT Docket No. 02-55 (rel. Jan. 19, 2005).

Marlene H. Dortch
March 7, 2005
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Should you have any questions regarding this matter, please do not hesitate to contact the undersigned.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Donald J. Manning". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Donald J. Manning
Vice President and General Counsel

cc: Catherine Seidel
Michael Wilhelm
Jeffrey Dygert
Elizabeth Lyle
Geoffrey M. Stearn